

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

ASHLAND INC.,	)	Civil Action No.: 2:05-CV-247
	)	
Plaintiff and Counter-Defendant,	)	
	)	
v.	)	
	)	
ACHIEVER BUSINESS SOLUTIONS	)	
INC.,	)	Judge Frost
	)	
Defendant	)	
	)	
and	)	
	)	
ACHIEVER BUSINESS SOLUTIONS	)	Magistrate Judge Abel
LTD.,	)	
	)	
Defendant, Counter-Plaintiff and	)	
Third Party Plaintiff,	)	
	)	
v.	)	
	)	<u>Rule 26(f) Report of Parties</u>
AIR PRODUCTS AND CHEMICALS, INC.	)	(to be filed no fewer than seven
	)	(7) days prior to the preliminary
Third Party Defendant.	)	pretrial conference)

1. Pursuant to Fed. R. Civ. P. 26(f), a meeting was held on August 4, 2005 and was attended by:

\_\_\_\_\_Bruce Tittel\_\_\_\_\_, counsel for plaintiff Ashland Inc.

\_\_\_\_\_Joseph F. Murray\_\_\_\_\_, counsel for defendant Achiever Business Solutions Inc. and defendant, counter-plaintiff and third party plaintiff Achiever Business Solutions Ltd.

2. The parties:

\_\_\_\_\_ unanimously consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. §636(c).

  X   do not unanimously consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. §636(c).

3. The parties:

\_\_\_\_\_ have exchanged the pre-discovery disclosures required by Rule 26(a)(1).

\_\_\_\_\_ will exchange such disclosures by \_\_\_\_\_.

\_\_\_\_\_ are exempt from disclosure under Rule 26(a)(1)(E).

  X   have agreed not to make initial disclosures.

4. Jurisdiction and Venue

a. Describe any contested issues relating to: (1) subject matter jurisdiction, (2) personal jurisdiction and/or (3) venue:

  None.    
\_\_\_\_\_  
\_\_\_\_\_

b. Describe the discovery, if any, that will be necessary to the resolution of issues relating to jurisdiction and venue:

  Not applicable.    
\_\_\_\_\_

c. Recommended date for filing motions addressing jurisdiction and venue:

  Not applicable.

5. Recommended cut-off date for filing any motion to amend the pleadings and/or to add additional parties: October 1, 2005.
6. Recommended discovery plan:
  - a. Describe the subjects on which discovery is to be sought and the nature and extent of discovery that each party will need:

If Ashland's motions under Fed. R. Civ. P. 12(b)(6) are denied, then it will need to complete the following discovery:

1. Investigate who are authors of software;
  2. The identity of the software provided to Ashland;
  3. Modifications to #2 above and who made them;
  4. Place were #2 was first published;
  5. Modifications adopted by Achiever that were made under the agreement with Ashland and who is now using them;
  6. Sales that Achiever made, license agreements entered into and sales to others of the Achiever Plus Software claimed to have been misappropriated by Ashland;
  7. Achiever's profit and loss information on Achiever Plus;
  8. Achiever's ownership of any copyright interest;
  9. Relationship between TCS and Achiever;
  10. The 1996 Agreement;
  11. All matters asserted or denied in the pleadings; and,
  12. Dealings with Lotus.
- b. What changes should be made, if any, in the limitations on discovery imposed under the Federal Rules of Civil Procedure

or the local rules of this Court, including the limitation on interrogatories and the limitation of ten depositions, each lasting no more than one day consisting of seven (7) hours?

Fifteen depositions of seven (7) hours if no translator is necessary.

If a translator is necessary, then those depositions may extend to fourteen (14) hours. Forty (40) interrogatories rather than twenty-five (25).

c. Identify the discovery, if any, that can be deferred pending settlement discussions and/or resolution of potentially dispositive motions:

Damages.

d. Describe the areas in which expert testimony is expected and indicate whether each expert will be specially retained within the meaning of Fed. R. Civ. P. 26(a)(2)

Ashland anticipates that it will be presenting expert testimony as to damages and as to Achiever's copyright infringement claim.

e. Recommended date for making primary expert designations:

April 1, 2006 with Experts Reports due on April 15, 2006 on issues where the party has the burden of proof.

f. Recommended date for making rebuttal expert designations:

April 15, 2006 with Rebuttal Reports due on May 15, 2006.

g. Recommended discovery cut-off date: June 30, 2006.

7. Recommended dispositive motion date: July 30, 2006.

8. Has a settlement demand been made? Yes. A response? Yes.

Date by which a settlement demand can be made: \_\_\_\_\_

Date by which a response can be made? \_\_\_\_\_

9. The earliest Settlement Week referral reasonably likely to be productive is the (choose one) March / June / September / December (year) \_\_\_\_\_ Settlement Week. September 2006

10. Other matters for the attention of the Court: \_\_\_\_\_

Ashland will be seeking an extension of time to respond to the

counterclaims and will be filing at least one motion under Fed. R.

Civ. P. 12(b)(6) and possibly a motion under Fed. R. Civ. P. 12(e).

Signatures:

Attorneys for Plaintiff:

"s/Bruce Tittel"

Ohio Bar # 0032729

Trial Attorney for

Ashland Inc.

"s/Thomas W. Humphrey"

Ohio Bar # 0062336

Trial Attorney for

Ashland Inc.

"s/John Paul Davis"

Ohio Bar # 0073446

Trial Attorney for

Ashland Inc.

Attorneys for Defendants:

"s/Joseph F. Murray"

Ohio Bar # 0063373

Trial Attorney for

Achiever Business Solutions Ltd.

"s/Geoffrey J. Moul"

Ohio Bar # 0070663

Trial Attorney for

Achiever Business Solutions Ltd.

"s/Brian K. Murphy"

Ohio Bar # 0070654

Trial Attorney for

Achiever Business Solutions Ltd.